



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8<sup>TH</sup> DAY OF JULY, 2019

BEFORE

THE HON'BLE MR. JUSTICE B. VEERAPPA

WRIT PETITION No.54482/2014(GM-RES)

BETWEEN:

SQN.LDR (RETD) R.V. NATHAN (10507)  
SON OF LATE V. RAJARAMAN  
AGED ABOUT 71 YEARS,  
NO.205-RAM, LAKSHMAN APARTMENTS  
NO.89 , DIAGONAL ROAD,  
V. V. PURAM,  
BANGALORE 560004.

... PETITIONER

(BY SRI S. V. GIRIDHAR, ADVOCATE)

AND:

1. THE UNION OF INDIA  
REPRESENTED BY ITS SECRETARY  
MINISTRY OF DEFENCE  
NEW DELHI-110 001
2. AIR OFFICER IN CHARGE  
(ADMINISTRATION)  
AIR HEAD QUARTERS  
VAYUBHAVAN  
REFIMARG,  
NEW DELHI 110 001.

3. THE SECRETARY,  
DEPARTMENT OF SAINIK WELFARE  
MINISTRY OF DEFENCE  
WEST BLOCK-4  
WING-5, R. K. PURAM,  
NEW DELHI 110 066.

4. THE MANAGING DIRECTOR  
CENTRAL ORGANISATION OF ECHS,  
ADJUTANT GENERAL BRANCH,  
ARMY HEAD QUARTERS,  
MAUDE LINES,  
NEW DELHI 110 010.

... RESPONDENTS

(BY SRI S.R. DODWAD CGC FOR R1 TO R4)

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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 8.8.2014 AT ANNEXURE-H ISSUED BY THE RESPONDENT-4 DATED 8.8.2014 AND ISSUE WRIT OF MANDAMUS DIRECTING THE RESPONDENTS TO EFFECT THE PAYMENT OF Rs.5,05,000/- IN TERMS OF THE ENTITLEMENT OF THE PETITIONER FORTHWITH TOGETHER WITH INTEREST THEREON AT 18% PER ANNUM FROM THE DATE OF FILING THE APPLICATION FOR REIMBURSEMENT I.E., W.E.F 20.1.2008 TILL THE DATE OF PAYMENT.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

This is an unfortunate case, where a retired Squadron Leader of the Indian Air Force, who fought two Indo-Pak wars in 1965 & 1971, is before this Court for reimbursement of the medical expenses incurred in an empanelled hospital, in connection with the ailment of his wife, who succumbed to untimely death.

2. The petitioner in the present writ petition has sought for the following reliefs:

- (a) *Issue a Writ of Certiorari or similar Writ, Order or Direction and Quash the Order dated 08.08.2014 as at Annexure-H issued by the Respondent No.4 bearing Ref No.B/49714-Sqn Ldr RV Nathan/AG/ECHS dated 08.08.2014;*
- (b) *Issue a Writ of Mandamus, similar Writ, Order or Direction to the Respondents to effect the payment of Rs.5,05,000/- in terms of the entitlement of Petitioner forthwith together with interest thereon @ 18% per annum w.e.f.*

*the date of filing the application for reimbursement i.e., w.e.f 20.01.2008 till the date of payment;*

**I. BRIEF FACTS OF THE CASE**

3. It is the case of the petitioner that he joined service in the year 1963 as a Trainee Officer and commissioned as an Officer in the Indian Air Force on 29.10.1966 and assigned with Service No.10507 and retired as Squadron Leader on 1<sup>st</sup> December 1986. During his service, he fought two wars for India viz., 1965 Indo – Pak War and the 1971 Indo-Pak War. Subsequently, he secured premature retirement and at present drawing pension.

4. It is further case of the petitioner that his wife was admitted to Mallya Hospital in August 2000 for certain ailments and he incurred the medical expenses to an extent of Rs.1,20,000/- and as against which, a sum of Rs.54,900/- was reimbursed to him.

5. It is further case of the petitioner that as a Member of the Air Force, he was a Member of the Armed Forces Group Insurance Scheme for the period from 1988 to 2001, the benefit of which was extended till 2006. The Central Government introduced a Scheme known as "Ex-Servicemen Contributory Health Scheme" ('ECHS' for short) and extended the benefit of medical treatment to Ex-servicemen on payment of contribution. Even prior to the introduction of the said Scheme, the Confederation of Ex-servicemen Association and others instituted a Special Leave Petition by way of Public Interest Litigation before the Hon'ble Supreme Court under Article 32 of the Constitution of India for appropriate directions to the Central Government to recognize the right of full and free medicare of Ex-servicemen and their families. The Hon'ble Supreme Court while considering the Public Interest Litigation in the case of ***Confederation of Ex-servicemen Association and others v. Union of India and others*** reported in

(2006)8 SCC 399 held that the Ex-servicemen who retired prior to 1-1-1996 are entitled to the benefit of ECHS without payment of any contribution and even without being formal member of the Scheme etc.

6. In the above judgment, a suggestion was made by the Hon'ble Supreme Court for waiver of payment of contribution required to be made under ECHS by the Ex.servicemen who retired prior to 1.1.1996. The Central Government did not oppose the same. Consequently, the PIL came to be allowed. The ECHS was held to be valid, legal and constitutional and it was further held that the ex.servicemen who retired prior to 1.1.1996 are entitled to the benefit of ECHS without necessity for payment of contribution. Therefore the petitioner is automatically entitled to the benefit of ECHS without necessity of payment of contribution.

7. When things stood thus, it is the case of the petitioner that his wife again admitted to Mallya Hospital on 16.4.2007 and was an in-patient for 77 days till her untimely death on 2.7.2007. The petitioner with the financial assistance from relatives and friends mobilized and spent an amount of Rs.6,30,000/- for the treatment of his wife. Upon demise of his wife, the petitioner preferred an application for reimbursement of medical expenses along with the relevant documents in support of his claim.

8. The petitioner further contended that the petitioner formally preferred an application on 23.8.2007 for reimbursement of the medical expenses under ECHS though there is no necessity of making formal application in this regard in view of the dictum of the Hon'ble Supreme Court stated *supra*. The request for reimbursement of medical expenses was rejected on 3.10.2007 on the ground that the petitioner is not a member of ECHS. Therefore the said application was forwarded to the Kendriya Sainik Board for

submission for reimbursement through the Defence Channel. The petitioner produced all the original documents to substantiate the claim submitted to Kendriya Sainik Board. There was no dispute at any point of time about the actual expenditure incurred by the petitioner. The only dispute is with regard to the eligibility/entitlement for such reimbursement. After a lapse of nearly one year, as against the claim of Rs.6,30,000/-, only a sum of Rs.1,25,000/- was granted and balance claim of Rs.5,05,000/- was rejected. Aggrieved by the said order passed by the 2<sup>nd</sup> respondent, the petitioner filed Original Application before the Armed Forces Tribunal, Kochi Bench in O.A. No.8/2012. The respondents filed objections to the said O.A. The Armed Forces Tribunal considering the application and the objections, by an order dated 13.6.2013 disposed of the application and directed the respondents to reconsider the claim of the petitioner afresh within four months from the date of the order in the light of the



decision of the Delhi High Court in the case of **Union of India vs. T.S. Oberoi** in LPA No.898/2002 decided on 7.11.2003 and pass appropriate orders in accordance with law. The relevant portion of the order passed by the Armed Forces Tribunal reads as under:

*7. Ordinarily, the benefit under the ECHS is admissible with effect from the date a person becomes a member of the scheme. The Delhi High Court, in T.S. Oberoi's Case, keeping view the fact and the circumstances of that case, applied the doctrine of the 'relation back' and extended the benefit of the scheme even for a period prior to the date of becoming the member of the scheme. In the present matter, the applicant claims the benefit so extended by the Delhi High Court. We therefore, consider it just and expedient to direct the respondents to reconsider the matter and take appropriate decision keeping in view the principles laid down by the Delhi High Court in T.S. Oberoi's case. It is also be kept in mind that after waiver of the requisite fee, by the Supreme Court in the matter of confederation of Ex-servicemen Association (Supra) nothing more was required to*

*be done except to opt the Ex-servicemen Contributory Health Scheme. Once a person opts for the membership and become member of ECHS, the benefit prior to the date of becoming member, if T.S. Oberoi's decision is applicable, can be extended. Therefore what is required from the respondents is to reconsider the applicant's case in the light of the decision of the Delhi High Court, in T.S. Oberoi's case and take appropriate decision. We accordingly, direct the respondents to consider the matter afresh and pass appropriate orders in accordance with law, within four months from today and communicate the same to the applicant.*

9. In spite of the order passed by the Tribunal, the respondents did not consider the claim of the petitioner. Therefore the petitioner filed Writ Petition No.2897/2004 before this Court. This Court by an order dated 18.7.2014 disposed of the writ petition recording the submission of the learned Central Government Counsel that petitioner's representation would be considered within six weeks. Thereafter the 4<sup>th</sup> respondent by the impugned

order dated 8.8.2014 accorded sanction for reimbursement of medical expenses incurred for treatment of wife of the petitioner at Central Government Health rates less the amount already paid to him, but has not accorded sanction for reimbursement of full medical expenses incurred. Hence the present writ petition is filed for the reliefs sought for.

## **II. COUNTER FILED BY THE RESPONDENTS**

10. The respondents filed counter-affidavit to the writ petition and has not disputed the fact that the petitioner is a retired Squadron Leader of the Indian Air force and also not denied the fact that he has admitted his wife in Mallya Hospital on 16.4.2007, where she was diagnosed for T.B. of brain and was under treatment in ICU for 77 days and on 2.7.2007 she succumbed to illness. It is also not in dispute that the petitioner approached the Air Force Headquarters on 24.9.2007 for reimbursement of Rs.6,30,000/- as medical expenses of his wife's treatment under ECHS which

was brought in force during the pendency of the PIL between ***Confederation of Ex. servicemen Associations and others vs. Union of India and others*** stated *supra*.

11. It is further stated in the counter-affidavit that the ECHS is a contributory scheme. On retirement, every service personnel will compulsorily become a member of ECHS by contributing his/her share and the scheme would be applicable for life time. The Scheme caters for medicare to the Ex-servicemen by establishing new polyclinics and augmented armed forces clinics across the country. It also provides for reimbursement of cost of medicines/drugs and for financial outlays. It is further stated that the petitioner has become the member of the ECHS scheme on 22.8.2007 after demise of his wife and therefore the Respondent No.2 had forwarded the case of the petitioner to the Kendriya Sainik Board as the petitioner was not member of ECHS on the date his wife was admitted to hospital. The Board extended the financial assistance of Rs.1,25,000/-. The

petitioner again after the orders passed by the Armed Forces Tribunal as well as this Court approached the respondents. The petitioner was asked to furnish all the documents in support of his claim. However, on 26.8.2014, the petitioner has produced only some of the documents and refused to produce the other documents. The claim of the petitioner was processed with available documents as per Central Government Health Scheme 2007 rates and total amount works out to Rs.2,19,735/-. Accordingly, the said amount was paid after deducting the amount already paid. Therefore sought for dismissal of the writ petition.

**III. ARGUMENTS ADVANCED BY THE LEARNED  
COUNSEL FOR THE PARTIES**

12. I have heard the learned counsel for the parties to the *lis*.

13. Sri S.V. Giridhar, learned counsel for the petitioner reiterating the grounds urged in the writ petition

has contended that in view of the dictum of the Hon'ble Supreme Court in the case of ***Confederaton of Ex-servicemen Assocaitions and others vs. Union of India and others*** stated *supra*, the Ex-servicemen who retired prior to 1.1.1996 are entitled to become members of ECHS without payment of any contribution and claim benefit of medical expenses under the said Scheme. Admittedly, the petitioner retired from service on 1.12.1986. Therefore even in the absence of becoming member, he is entitled to the benefit in view of the dictum of the Hon'ble Supreme Court stated *supra*. He would further contend that under ECHS, the petitioner is entitled to reimbursement of full medical expenses incurred. The impugned order passed by the 4<sup>th</sup> respondent is in utter violation of the conditions of ECHS and therefore cannot be sustained. The respondents are liable to reimburse full medical expenses incurred by the petitioner i.e., Rs.5,05,000/- {Rs.6,30,000/- minus Rs.1,25,000/- (amount

already paid)). He further contended that even if the person is admitted to non-empanelled hospital in certain emergencies, he is entitled to reimbursement of the medical expenses. Admittedly, the petitioner admitted his wife to empanelled hospital under the ECHS. Therefore he is entitled to reimbursement of full medical expenses incurred. The same has not been considered. He would further contend that the Armed Forces Tribunal, which is an Appellate Authority has held that the petitioner is entitled to reimbursement under the ECHS scheme. The impugned order has been passed by the 4<sup>th</sup> respondent without considering the conditions of the ECHS scheme and it is not a speaking order and cannot be sustained and therefore he sought to allow the writ petition as sought for with costs.

14. In support of his contentions, learned counsel for the petitioner relied upon the following decisions:

1. Milap Singh vs. Union of India and another {2004 SCC OnLine Delhi 493}

2. Daljit Singh vs. Government of NCT of Delhi & others {2013 SCC OnLine Del 147}
3. Hans Raj Sharma vs. Union of India and others {2013 SCC OnLine J&K 59}
4. Shiva Kant Jha vs. Union of India {(2018)16 SCC 187}

15. Per contra, Sri S.R. Dodwad, learned CGC while reiterating the averments made in the counter-affidavit has contended that as on the date of the admission of his wife to the Mallya hospital, the petitioner was not a member of ECHS. Further, inspite of the request made by the respondents, the petitioner refused to produce all the documents and provided only certain documents. Based on the documents produced, the authorities proceeded to pass the impugned order and the same is justified. He would further contend that as per Annexure-R2 produced along with the counter-affidavit, amount billed is Rs.6,37,162/-; amount admissible is Rs.2,19,735/-; amount disallowed is Rs.4,17,427/- and reason for



disallowance is the details not available with bills. He also relied upon Annexure - R3 dated 24.11.2014 passed by the respondents subsequent to the impugned order, wherein it is stated that as per the existing policy, bills are required for making any payment from Public Fund and it is therefore requested to approach the hospital and submit the required bills for which payment can be made at later stage by raising supplementary claim. Therefore he sought to dismiss the writ petition.

### **III. DETERMINATION**

16. Having heard the learned counsel for the parties, it is an undisputed fact that the petitioner has served in the Indian Air Force for more than two decades and during his service, he fought two wars viz., 1965 Indo – Pak War and 1971 Indo – Pak war. It is also not in dispute that the Central Government taking into consideration the services rendered by the Ex-servicemen of the Indian Armed Forces

to the Nation, introduced a beneficial scheme known as "Ex-Servicemen Contributory Health Scheme" and extended the benefit of medical treatment to Ex-servicemen on payment of contribution. It is also not in dispute that even prior to the introduction of the said Scheme, the Confederation of Ex-Servicemen Associations and others instituted a Special Leave Petition by way of Public Interest Litigation under Article 32 of the Constitution of India before the Hon'ble Supreme Court. The Hon'ble Supreme Court in the said SLP while considering the provisions of Articles 21 and 41 of the Constitution of India, has held at paragraphs 66,67 and 69 as under:

*66. We are in agreement with the above view. In our considered opinion, though the right to medical aid is a fundamental right of all citizens including ex-servicemen guaranteed by Article 21 of the Constitution, framing of scheme for ex-servicemen and asking them to pay "one-time contribution" neither violates Part III nor is it inconsistent with Part IV of the Constitution. Ex-*

*servicemen who are getting pension have been asked to become members of ECHS by making "one-time contribution" of reasonable amount (ranging from Rs 1800 to Rs 18,000). To us, this cannot be held illegal, unlawful, arbitrary or otherwise unreasonable.*

*67. Observations made by this Court in the cases relied upon by the petitioner and interveners including Consumer Education & Research Centre [(1995) 3 SCC 42 : 1995 SCC (L&S) 604] referred to earlier, must be read as limited to the facts before the court and should not be understood to have laid down a proposition of law having universal or general application irrespective of the factual situation before the court. To us, the policy decision in formulating contributory scheme for ex-servicemen is in accordance with the provisions of the Constitution and also in consonance with the law laid down by this Court. We see no infirmity therein. We, therefore, hold that getting free and full medical facilities is not a part of the fundamental right of ex-servicemen.*

*69. Taking into account all these facts and the circumstances in their entirety, on 8-3-2006 we passed the following order:*

*"Mr K.S. Bhati, learned counsel appearing for Petitioner 1, commenced his submissions at 10.30 a.m. and concluded at 2.35 p.m. Thereafter, Mr J.S. Manhas, learned counsel appearing for Petitioners 2 and 3, made his submissions till 3.00 p.m. Mr Ravi P. Mehrotra, learned counsel appearing for the Union of India, made his submissions till 3.25 p.m. Mr K.S. Bhati, learned counsel, thereafter rejoined and concluded at 3.30 p.m. Hearing concluded.*

*We have heard the learned counsel for the parties on the questions of law, particularly on the aspect of the correctness of broad observations made in the decision of a three-Judge Bench in Consumer Education & Research Centre v. Union of India [(1995) 3 SCC 42 : 1995 SCC (L&S) 604] .*

*During the course of hearing with the assistance of the learned counsel, we have perused the Ex-Servicemen Contributory Health Scheme (for short 'ECHS') dated 30-12-2002. The contribution to be made by an ex-serviceman so as to avail the*

*benefit of health scheme under ECHS is one-time payment ranging from Rs.1800 to Rs.18,000 depending upon the amount of pension drawn by him. In this writ petition, we are concerned with the cases of those ex-servicemen who have retired before 1-1-1996. It is evident that this class of ex-servicemen is a diminishing category. The Government of India, Ministry of Defence, shall consider, without it being treated as a precedent, the question of granting the waiver of contribution required to be made under ECHS by the ex-servicemen of the category with which we are concerned i.e. those who have retired prior to 1-1-1996 having regard to the contribution that may have been made by them in the service of the nation and particularly considering that they, while in service, were not making any payment so as to enjoy the benefit of medical care. Alternatively, the Government can also consider making payment on behalf of those who may be interested in availing the benefits under ECHS. In case of any difficulty in granting this one-time concession, the Government shall file an affidavit within a period of four weeks, placing on record the approximate amount which may have to be waived or contributed by the Government on behalf of such category of ex-*

*servicemen. Further, if the Government decides to waive it or pay it, without it being treated as a precedent, in that event, the amount may not be incorporated in the affidavit. The waiver or payment would be only in respect of those who voluntarily wish to join ECHS.*

17. It is not in dispute that the Hon'ble Supreme Court in the above decision has upheld the ECHS Scheme and held that Ex-servicemen who retired prior to 1.1.1996 are entitled to the benefit of ECHS without payment of any contribution and even without being formal member of the Scheme. Admittedly, the petitioner retired from service on 1.12.1986. Therefore in all force, he is entitled to the benefit of ECHS and entitled to the reimbursement of full medical expenses incurred for ailment of his wife till her untimely demise. It is also not in dispute that the petitioner's wife was admitted in Mallya Hospital on 16.4.2007 and was in-patient for 77 days till her untimely demise on 2.7.2007. It is also brought to the notice of this

Court Annexure-R4 filed along with the counter-affidavit pertaining to procedure for payment and reimbursement of medical expenses under ECHS, wherein Item No.8 pertains to emergency treatment and it reads as under:

***EMERGENCY TREATMENT***

*8. In emergencies and life threatening conditions, when patients may not be able to follow the normal referral procedure, the patients may report to the nearest hospital, preferably empanelled.*

*(a) **Empanelled Hospital** – Immediate emergency treatment in any empanelled hospital will be rendered to ESM on confirmation of ECHS membership from the ECHS card. Payment for such treatment will be regulated as under:-*

- (i) Empanelled hospital will inform ECHS Polyclinic about the emergency admission at the earliest but not later than 24 Hrs.*
- (ii) The empanelled hospital will not collect payment from ECHS member.*

- (iii) *The actual cost incurred for emergency procedure will be payable by ECHS. Bill for emergency treatment will be forwarded to concerned Polyclinic for payment as per normal procedure. Such bills will be superscribed with 'EMERGENCY TREATMENT' written in Block capitals in Red.*
- (iv) *On learning about admission of an ECHS member in an Empanelled hospital, the O I/C Polyclinic will make arrangements for verification of the facts.*
- (v) *If, during the course of investigations/ treatment a specific diagnosis is established requiring further management, the facts will be verified by concerned O I/C Polyclinic and the patient referred for the same formally.*
- (vi) *In case of malpractice, unethical practices or medical negligence by an empanelled Hospital or Nursing home Particularly in management or emergencies necessary action will be*



*taken by the Station Commander to dis-  
empanel the Hospital or Nursing Home.*

18. It is not in dispute that in view of the dictum of the Hon'ble Supreme Court stated *supra*, the petitioner is entitled to the benefit of ECHS with all force. Admittedly, it is not disputed by the respondents in respect of entitlement of medical reimbursement to the petitioner under the scheme and the only contention raised by the Central Government in the counter-affidavit and also urged by the learned CGC during the course of arguments is that inspite of the request made, the petitioner has produced only some documents and refused to produced all the required documents. Subsequently after the impugned order passed as per Annexure-H, the Central Government requested the petitioner as per Annexure-R3 dated 24.11.2014 to produce the required medical bills for which payment can be made at later stage by raising supplementary claim.

This is only an after thought by the respondents which is impermissible.

19. In view of the dictum of the Hon'ble Supreme Court stated supra, the contention of the learned CGC that the wife of the petitioner died on 2.7.2007 and the petitioner became member of ECHS on 22.8.2007 and therefore the petitioner is not entitled to reimbursement of medical expenses of his wife, cannot be accepted. It is further relevant to state that the impugned order was passed on 8.8.2014. Subsequently in the 'Worksheet and Assessment' produced along with Annexure-R2, it is stated that the petitioner is not entitled to some of the medical claims on the ground that the details are not available with the bills. The 'Work Sheet and Assessment' dated 28.8.2014 produced along with Annexure-R2 reads as under:

**WORK SHEET AND ASSESMENT**

1. Reference
2. ECHS MEMBER ID
  - (a) Name of Member : Sqn Ldr (retd) RV Nathan
  - (b) Name of patient : Mrs. Vimala Nathan (Wife)
  - (c) ECHS No. : HY 0053137
3. Diagnosis : ASPIRATION PNEUMONIA –  
CARDIO RESPIRATORY ARREST  
TUBERCULAR MENINGITIS  
DIABETES MELLITUS
4. Hospital/Diagnostic Centre : MALLYA HOSPITAL,  
BANGALORE
5. Date of Admission: 16 Apr 2007  
Date of Death. 02 Jul 2007
6. Type pf Claim : Individual Claim
7. Clinical Notes:
8. Bill Details:
  - (a) Amt Billed - Rs. 6,37,162/-
  - (b) Amt Admissible - Rs.2,19,735/-
  - (c) Amt Disallowed - Rs.4,17,427/-
  - (d) Reason for Disallowance - Details not  
available with bills

20. The Central Government filed counter to the present writ petition to sustain Annexure-H dated 8.8.2014 and supplemented the reasons which are not stated in the impugned order. The Central Government by way of counter-affidavit and subsequent documents viz., Annexure-R2 dated 28.8.2014 and Annexure-R3 dated 24.11.2014, tried to supplement the reasons, which clearly indicates that the Central Government has not come to the Court with clean hands while justifying the impugned order passed erroneously and contrary to the material on record.

21. In view of the aforesaid admitted facts, it is clear that the entitlement of the petitioner for reimbursement of medical expenses under ECHS is not in dispute. The only dispute is in respect of reimbursement full medical expenses incurred. According to the petitioner, he has spent Rs.7,65,985/- as per in-patient bill - Annexure - A9 produced before the Armed Forces Tribunal. Further, it is

specifically stated by the petitioner in O.A. No.8/2012 (Annexure-D) filed before the Armed Forces Tribunal at paragraph 4(vii) as under:

*" The applicant has no other means or source of income other than the pension, is drawing as a member of the Armed Forces. The Applicant has served the country for 20 years as an Officer and 3 years as a Trainee. With the financial assistance from friends and relatives, the Applicant mobilized the sum of Rs.6,30,000/- for treatment towards his late wife. The Invoice/In-patient bill of late Smt. Vimala Nathan is produced herewith as Annexure – A9"*

The same is neither disputed by the Central Government in the counter-affidavit nor in the arguments advanced. When the petitioner has produced the in-patient bill as per Annexure-A9 issued by the Mallya Hospital, which is an empanelled hospital under the ECHS, pertaining to the medical expenses incurred in connection with aliment of his wife till her untimely death, in all fairness, the respondents

ought to have reimbursed full medical expenses incurred in terms of the ECHS and in view of the dictum of the Hon'ble Supreme Court stated *supra*. But, the respondents failed to reimburse full medical expenses incurred by the petitioner.

22. The impugned order passed by the 4<sup>th</sup> respondent is not a speaking order. Learned CGC tried to justify the impugned order by producing Annexures-R1 to R5 along with the counter-affidavit. What is not stated in the impugned order cannot be supplemented by producing the additional documents along with the counter-affidavit. The same is impermissible under law.

23. At this stage, it is relevant to state that the Hon'ble Supreme Court in the case of ***Shiva Kant Jha vs. Union of India*** reported in (2018)16 SCC 187, held at paragraphs 12, 13, 16,17,18 and 19 as under:

*12. The Union of India, by filing an affidavit before this Court, submitted that most of the claims are*

*reimbursed only through CGHS sources as per the package rates of CGHS. However, there are few such cases received occasionally where reimbursement is done from two sources i.e. from CGHS and from the insurance companies. Such claims are first processed by insurance companies and then by CGHS. The claim of CGHS is reimbursed as per the Office Memorandum dated 19-2-2009. It is further submitted that no such cases involving reimbursement from two sources is pending in CGHS.*

*13. Further, the writ petitioner was admitted in emergency condition with complaint of breathlessness on 11-11-2013 in Fortis Escorts Health Institute, which was a non-empanelled hospital at the relevant time. He underwent angiography on 12-11-2013 which revealed diffused disease in left anterior descending coronary artery 50-60%. He had been implanted the CRT-D device (Combo) as part of cardiac resynchronisation therapy (CRT) on 12-11-2013. The hospital charged an amount of Rs.11,56,293 for the said treatment, out of which, an amount of Rs.10,70,000 was for the cost of the unlisted cardiac implant (CRT-D) and an*

*amount of Rs.3,19,950 was paid by the insurance company directly to the hospital.*

*16. With a view to provide the medical facility to the retired/serving CGHS beneficiaries, the Government has empanelled a large number of hospitals on CGHS panel, however, the rates charged for such facility shall be only at CGHS rates and, hence, the same are paid as per the procedure. Though the respondent State has pleaded that CGHS has to deal with large number of such retired beneficiaries and if the petitioner is compensated beyond the policy, it would have large-scale ramification as none would follow the procedure to approach the empanelled hospitals and would rather choose private hospital as per their own free will. It cannot be ignored that such private hospitals raise exorbitant bills subjecting the patient to various tests, procedures and treatment which may not be necessary at all times.*

*17. It is a settled legal position that the government employee during his lifetime or after his retirement is entitled to get the benefit of the medical facilities and no fetters can be placed on his rights. It is acceptable to common sense, that ultimate decision*



*as to how a patient should be treated vests only with the doctor, who is well versed and expert both on academic qualification and experience gained. Very little scope is left to the patient or his relative to decide as to the manner in which the ailment should be treated. Specialty hospitals are established for treatment of specified ailments and services of doctors specialised in a discipline are availed by patients only to ensure proper, required and safe treatment. Can it be said that taking treatment in specialty hospital by itself would deprive a person to claim reimbursement solely on the ground that the said hospital is not included in the government order. The right to medical claim cannot be denied merely because the name of the hospital is not included in the government order. The real test must be the factum of treatment. Before any medical claim is honoured, the authorities are bound to ensure as to whether the claimant had actually taken treatment and the factum of treatment is supported by records duly certified by doctors/hospitals concerned. Once, it is established, the claim cannot be denied on technical grounds. Clearly, in the present case, by taking a very inhuman approach, the officials of CGHS have denied the grant of*

*medical reimbursement in full to the petitioner forcing him to approach this Court.*

*18. This is hardly a satisfactory state of affairs. The relevant authorities are required to be more responsive and cannot in a mechanical manner deprive an employee of his legitimate reimbursement. The Central Government Health Scheme (CGHS) was propounded with a purpose of providing health facility scheme to the Central Government employees so that they are not left without medical care after retirement. It was in furtherance of the object of a welfare State, which must provide for such medical care that the scheme was brought in force. In the facts of the present case, it cannot be denied that the writ petitioner was admitted in the above said hospitals in emergency conditions. Moreover, the law does not require that prior permission has to be taken in such situation where the survival of the person is the prime consideration. The doctors did his operation and had implanted CRT-D device and have done so as one essential and timely. Though it is the claim of the respondent State that the rates were exorbitant whereas the rates charged for such facility shall be only at CGHS rates and that too after following a*

*proper procedure given in the circulars issued on time to time by the Ministry concerned, it also cannot be denied that the petitioner was taken to hospital under emergency conditions for survival of his life which requirement was above the sanctions and treatment in empanelled hospitals.*

*19. In the present view of the matter, we are of the considered opinion that CGHS is responsible for taking care of healthcare needs and well-being of the Central Government employees and pensioners. In the facts and circumstances of the case, we are of the opinion that the treatment of the petitioner in non-empanelled hospital was genuine because there was no option left with him at the relevant time. We, therefore, direct the respondent State to pay the balance amount of Rs.4,99,555/- to the writ petitioner. We also make it clear that the said decision is confined to this case only."*

24. At this juncture, it is relevant to state that the role of a soldier who plays in defending and protecting the borders of India is really unparalleled. A soldier is the most disciplined person of the nation. On him depends, to a great

extent, the security and the stability of the nation. It would not be wrong to say that there would be no India without Indian Army. It is the backbone of the country. It is also one of the few institutions left in the country which could be considered as completely neutral and reliable. If any thing goes really wrong in the country, we look at the army for solutions, be it riot control, counter insurgency, fighting terrorism, fighting Naxalites etc., A soldier's life, no doubt, is very difficult and hard. It is he who obeys the orders of his commanders and does what is ordered by them. A soldier is a man, who keeps night – long vigils on the borders even in the face of great and grave dangers, for, he stands heroically before the force of the enemies. A soldier faces death bravely. He fights to the last by pricing his blood to the nation, in order to save his motherland. He sacrifices everything for the sake of the nation. It is he who has to live miles away from his family. It is he who gets into jaws of the death while defending his country. "His life

is not a bed of roses at all"; rather it is a bed of thorns.

The life of soldier is really very hard, but he is not scared it. For him, the defense of the country is the highest of his duties and responsibilities. In war, he fights bravely but at the same time he helps the civilian population. The role which Indian soldier plays during each international war is exemplary. Soldiers help and assist even the civilian population as they always act in accordance with the complete military traditions. A soldier is always facing death. He never shirks responsibility. He fights in most difficult terrains, on hills and mountains, in plains and forest. The defense of the country is his primary mission. The role of soldier in safeguarding the frontiers of his motherland is unique. He lives and dies for the Nation.

25. In view of the fact that the role of the Armed Forces is of paramount importance as stated supra, the Central Government all along extending various benefits to personnel of Indian Army, Navy and Air Force who are

protecting India from external enemies. It is the duty of the every citizen of the country and the State and the Central Governments to salute their sacrifice and should not drag them before the Court for getting reimbursement of medical expenses in terms of the ECHS, which was introduced by the Central Government with the avowed object. When the Central Government with object to fulfill Articles 14, 21 and 41 of the Constitution of India has introduced ECHS, the authorities working under the Central Government without applying their mind should not deprive the Ex-servicemen from getting their legitimate benefits under the ECHS and they should not drag the matter unnecessarily. Unfortunately, the petitioner is before this Court for reimbursement of medical expenses incurred in respect of ailment of his wife, who succumbed to untimely death in the month of July-2007 i.e., more than eleven years ago. The authorities of the Central Government deprived the petitioner by not reimbursing full medical

expenses incurred under the ECHS and unnecessarily dragged him before the Court. The attitude of such officers of the Central Government should be deprecated in the interest of the Nation at large.

### **V. CONCLUSION**

26. For the reasons stated above, the Writ Petition is **allowed**. The impugned order dated 8.8.2014 passed by 4<sup>th</sup> respondent as per Annexure-H is hereby quashed. A Writ of mandamus is issued to Respondent Nos.1,2 and 4 to effect the payment of Rs.4,10,260/- (Rupees four lakhs ten thousand two hundred and sixty only) in terms of entitlement of the petitioner under Ex-Servicemen Contributory Health Scheme together with interest at 9% per annum from the date of filing the application for reimbursement i.e., 20.1.2008 till the date of payment. The respondents shall ensure payment of the above sum within a period of six weeks from the date of receipt of copy of this

order, failing which the petitioner is at liberty to initiate contempt proceedings against the concerned respondents.

27. The authorities of the Central Government have dragged the petitioner unnecessarily before the Armed Forces Tribunal and this Court and deprived him the legal reimbursement of full medical expenses incurred, in terms of ECHS for more than 11 years unnecessarily without any reason. Therefore the respondents are hereby directed to pay costs of Rs.50,000/- (Rupees fifty thousand only) to the petitioner in the form of litigation expenses within a period of six weeks from the date of receipt of copy of this order. Liberty is reserved to the respondents to recover the costs from the 4<sup>th</sup> respondent from his pocket.

Ordered accordingly.

Sd/-  
**JUDGE**

gss/-